

RODOLFO VELASQUEZ  
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Plaintiff in:  
Propia Persona

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CLERK OF COURT  
U.S. DISTRICT COURT  
SAN FRANCISCO, CA

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

EDL

CV 15 4863  
Case No.

RODOLFO VELASQUEZ,

Plaintiff,

v.

NEW PENN FINANCIAL, LLC.  
d/b/a SHELLPOINT MORTGAGE  
SERVICING,  
FREDDIE MAC.

Defendants.

COMPLAINT FOR:

FIRST: AIDING & ABETTING BREACH OF  
FIDUCIARY DUTY;  
SECOND: AIDING & ABETTING FRAUD;  
THIRD: AIDING & ABETTING INTENTIONAL  
MISREPRESENTATION;  
FOURTH: AIDING & ABETTING NEGLIGENT  
MISREPRESENTATION;  
FIFTH: NEGLIGENCE;  
SIXTH: BREACH OF CONTRACT

**JURY TRIAL DEMANDED**

I. INTRODUCTION

1. This case is linked with three appeals presently under review before the U.S. Bankruptcy Appellate Panel of the Ninth Circuit, appeals No's: 15-1175, 15-1176 and 15-1177. Defendants New Penn Financial, LLC is understood that it's the mother of d/b/a Shellpoint ("Shellpoint") and they are not part of the three appeals because, Shellpoint came into Plaintiff Rodolfo Velasquez' ("Velasquez") mortgage loan path after the appeals were filed. Eventually, this subjected case is believe will join at later time the three appeals mentioned and pending before the Appellate Panel.

2. Apparently, Shellpoint is [not] authorize to do business in California, at least it looks like because it didn't designate an agent of service, but Plaintiff is not sure of that fact totally. Shellpoint designated an agent of service under New Penn Financial, LLC's ("New Penn") acceptance.

3. Defendant Freddie Mac ("Freddie Mac") is the Plaintiff's mortgage loan owner and it's suited in its capacity, herein. See Exhibit 1

4. In July 21, 2015, Defendant Shellpoint informed the Plaintiff Rodolfo Velasquez that his mortgage loan was transferred from Bank of America to it and from that date on, Defendant Shellpoint will service his mortgage loan account. See Exhibit No. 2

5. This case arises out of a massive errors in the loan account mishandled by Bank of America that transferred the loan account with tons of problem before been resolved to Shellpoint, but Plaintiff cannot do anything to avoid it other than to file the present lawsuit to stop Shellpoint to continue harassing him, and to stop Shellpoint also from attempting to collect money that it is not entitled to. Shellpoint harassingly demands from Plaintiff money that he already paid to Bank of America. Plaintiff condemn the fact that Shellpoint attempts to force him to pay twice for some payments already paid. No attempts have done to correct the gross loan account errors committed by Shellpoint, Bank of America, New Penn or Freddie Mac.

6. From July 21, 2021 as of the filing of this document, Shellpoint is [harassing] the Plaintiff with a phone calls and foreclosure of his San Francisco property threats at least five times per day demanding questionable amounts of payments. Plaintiff Rodolfo Velasquez will use the discovery process to force Shellpoint to disclose and explain sufficient clarity the following questionable demand for payments:

1. Principal	\$ 389.71
2. Interest	\$ 570.76
3. Escrow	\$ 124.83
4. Monthly Payment	\$ 1,085.30
5. Over Due Payment	\$ 10,017.36

Totaling: \$ 11,102.66      See Exhibit 3

7. In Addition, Exhibit 3 showed at the right bottom corner the following questionable information, and the amounts included do not match with the payments already cashed by Bank of America that covers the period demanded for payments by Shellpoint:

“You are late on your mortgage payments. Failure to bring your loan current may result in fees and foreclosure – the loss of your home. As of 07/21/2015, you are 293 days delinquent on your mortgage loan.”

“Recent Account History

o Payment due 02/01/15:	unpaid balance of \$4,590.86
o Payment due 03/01/15	unpaid balance of \$1,085.30
o Payment due 04/01/15	unpaid balance of \$1,085.30
o Payment due 05/01/15	unpaid balance of \$1,085.30
o Payment due 06/01/15	unpaid balance of \$1,085.30
o Payment due 07/01/15	unpaid balance of \$1,085.30
o Payment due 08/01/15	Current payment due”

8. Exhibits included in Exhibit 4, contradicts the erroneous Shellpoint’s demand for payment showed in exhibit 3. See Exhibit 4 Exhibit 4, include several monthly payments that directly contradicting Shellpoint’s demand for payment. It’s so obscure why Shellpoint is refusing to credit Plaintiff’s mortgage payment. Plaintiff assumes that his payments are not

1 credited to his account because, Shellpoint is criminally attempting to force the Plaintiff to get  
2 into mortgage default, and then later gaining the right to foreclose his San Francisco property.  
3 Secondly, because Plaintiff submitted the monthly payment in the amount of \$ 960.47 established  
4 by his loan Note of 30 years fixed rate mortgage, but Shellpoint demands higher amount of:  
5 \$1,085.30 that could be the erroneous reason Shellpoint wrongfully rejected Plaintiff's monthly  
6 mortgage payments.  
7

8 9. Further, Defendant Shellpoint requested from Plaintiff Rodolfo Velasquez a payment for  
9 the [balance] of his mortgage loan in the amount of: \$ 107,163.90 as of August 2015. The  
10 original amount of the loan was approved in February 09, 1999 for Plaintiff in the amount of:  
11 \$150,000.00 with his first mortgage payment set for March 1999 to be paid in April 1, 1999.  
12

13 See Exhibit 5

14 10. Plaintiff Velasquez signed and received a 30 (thirty) years fixed rate loan with interest  
15 of: 6.625% annually. His monthly payment was set in the amount of \$ 960.47 and it shouldn't be  
16 changed unless the parties involves allows it, but in this case, Plaintiff Rodolfo Velasquez does  
17 not allow Shellpoint, nor Bank of America or any other party to [change] it under no  
18 circumstances. From day one to the end of the entire life of the loan that will be matured in  
19 March 2029, the monthly payment must remain within the same amount of: \$960.47. See the  
20 Loan Note attached, and marked as Exhibit 6  
21

22 11. Shellpoint submitted to Plaintiff Rodolfo Velasquez a confusing document called  
23 Payment History that requires mandatorily an extensive explanation from Shellpoint to  
24 Velasquez. The only piece of information Plaintiff could understood through the Payment  
25 History was the balance of \$107,163.90 showed on page one (1), other than that, the document of  
26 Payment History is confusing and illegible, however, Plaintiff Rodolfo Velasquez demanded,  
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1 Shellpoint to produce a legible and easy to understand document, but as of the filing of this  
2 document, Shellpoint ignored the demand requested by Mr. Velasquez. See Exhibit No. 7

3  
4 12. From 1999 to 2015, more or less Plaintiff paid to his loan servicers and for his loan  
5 account 15 years of monthly payment as of the filing of this document. Because the out of  
6 balance amount submitted by Shellpoint to Velasquez in the amount of \$107,163.90 does not  
7 match up with the calculations obtained by Plaintiff's Calculator expert obtaining different  
8 amount of: \$ 102,446.29, however Shellpoint's calculations became so suspicious to be correct.  
9 The entire 30 years of monthly payment were calculated by Plaintiff's Expert, and because the  
10 calculations does not match up with Shellpoint's, Shellpoint must produce its calculation to  
11 Plaintiff to be verified. Plaintiff concluded that Shellpoint is inflating the balance of his  
12 mortgage loan with its sole intention to hurt him financially. According to Plaintiff's Expert, the  
13 correct balance should be \$ 102,446.29 instead of \$107,163.90, the difference is: \$ 4,717.61. See  
14 Exhibit 8  
15

16 13. As is clear and established by the loan Note enclosed in this complaint, Plaintiff has to  
17 pay a monthly payment in the amount of \$ 960.47 from day one until the end of the loan.  
18 Shellpoint is breaching the loan agreement demanding higher monthly payments from the  
19 Plaintiff. In addition, as regular obligation, Plaintiff submitted his September 2015 payment and  
20 Shellpoint refused to accept the payment as of the filing of this document, however breaching  
21 again the loan contract. Plaintiff believes that Shellpoint refused to process Plaintiff's September  
22 2015 payment, because the payment did not include the amount of \$ 1,085.30 claimed by it, the  
23 amount included in the payment is: \$ 960.47 because Plaintiff is not obligated to submit higher  
24 amounts. If Shellpoint is refusing to accept Plaintiff's mortgage payments, must be under its  
25 own decision and its own consequences, but under no circumstances to his expense.  
26  
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1 14. By refusing to cash Plaintiff's monthly payments in the amount of \$ 960.47 each month,  
2 Shellpoint is forcing the Plaintiff to accumulate unnecessary debt, consequently fall in default and  
3 later Shellpoint will gain the fact to foreclose Plaintiff's San Francisco Property located at 58  
4 Lobos Street, San Francisco, California illegally. Shellpoint action is dirty, fraudulent and  
5 require the intervention of this Court to stop it from continue committing such crime against the  
6 Plaintiff Rodolfo Velasquez and other borrowers in similar circumstances.  
7

8 15. As a result of the conduct of Defendants Shellpoint Mortgage Servicing, New Penn  
9 Financial and Freddie Mac which was aided and abetted by its Counsel *Andrea M. Hicks* herein,  
10 the financial loss Plaintiff suffered is estimated to be in excess of \$500,000.00 Five Hundred  
11 Thousand dollars.  
12

## 13 II. JURISDICTION AND VENUE

14 16. This Court has jurisdiction over this matter because Defendants Shellpoint maybe could  
15 conduct business in the County of San Francisco, State of California along with the other two  
16 defendants suited in this complaint.  
17

18 17. Jurisdiction and Venue is proper in the County of San Francisco pursuant to 28 U.S.C. §  
19 1348 - Banking association as party 28 U.S. Code § 1391 Plaintiff's residence.  
20

## 21 III. THE PARTIES

22 18. Plaintiff Rodolfo Velasquez is a resident of Vallejo, California.  
23

24 19. Plaintiff Velasquez owns a property located at 58 Lobos Street, San Francisco  
25 California. Plaintiff Velasquez suffered damages including, but not limited to the loss of his  
26 mentally stability thinking that Shellpoint also will force him to get into default from its refusal to  
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1 accept his monthly payments in the amount of \$ 960.47 and under that circumstance to  
2 accumulate unnecessary debt. Also, thinking that \$ 11,102.66 and other requests for payments  
3 marked in this complaint in exhibit 3 as of result of Defendant's conduct alleged herein,  
4 Velasquez suffered harassment consequently mental anguish and other pains to be described at  
5 trial.  
6

7 20. Defendant Shellpoint Mortgage Servicing ("Shellpoint") principal place of business is  
8 in Troy Michigan 48099-1410. Shellpoint maybe has the right to do business throughout  
9 California, including in the County of San Francisco, and has provided business checking  
10 accounts and other banking services related to the subject matter of this complaint.  
11

12 21. New Penn Financial, LLC is a Pennsylvania's state corporation with its main office at:  
13 4000 Chemical Road, Suite 200, Plymouth, Meeting, PA 19462.

14 22. Freddie Mac is a Virginia's Corporation or Federal Agency, located at: 8200 Jones  
15 Branch Drive McLean, VA 22102-3110  
16

### 17 III. PLAINTIFF'S COMPLAINT FOR DAMAGES

18 23. In making the false and fraudulent statements as described herein, Shellpoint  
19 intentionally inflated its Payment History and engaged in a common scheme of deception  
20 significantly and obscure that Plaintiff would never thought that his monthly payments would be  
21 credited in wrong amounts and further, the refusal of his monthly payment by his loan servicer  
22 Shellpoint with the sole intention to force him to get into mortgage default, consequently in  
23 serious financial and physical damage.  
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#### IV. THE FORECLOSURE ISSUE AND MORTGAGE FRAUD SCHEME

24. It is imperative to file this complaint in the early stages of the problem sufficiently on time to avoid foreclosure issues as the previous loan servicer did. Shellpoint started to refuse Plaintiff's monthly payments in the amount of \$ 960.47 from amount governed by the loan Note. To gain illegal foreclosure right, adopted such awful decision to refuse monthly payments. Shellpoint is certain that Plaintiff at later time will fall in loan default then the foreclosure of his San Francisco property would be eminent, and the bonanza will get into place where Shellpoint will pocket Plaintiff's money from the illegal sell of his San Francisco property. Defendants wrongfully calculates that if in case that Plaintiff would be sufficient to pay the forced default amount, then it would get higher revenue fat enough to celebrate the fiesta in company of their Counsel in record.

#### CAUSES OF ACTION FIRST CAUSE OF ACTION AIDING & ABETTING BREACH OF FIDUCIARY DUTY (Against all Defendants)

25. Plaintiffs Rodolfo Velasquez by reference the foregoing allegations as though fully set forth herein.

26. At all relevant times, Shellpoint and all Defendants named here owed fiduciary duties to Plaintiff by virtue of the trust reposed in him. Shellpoint and all Defendants' fiduciary duties to Plaintiff, included a duty of utmost loyalty, good faith, and candor. As a fiduciary, Shellpoint and all Defendants had a duty to refrain from taking actions detrimental to Plaintiff's financial and other interests. As a result of the massive fraud and embezzlement by Shellpoint and all Defendants named here breached their fiduciary duties owed to Plaintiff.

27. Bank of America is only been mentioned by Shellpoint disclosing that Plaintiff's loan record was transferred from it. Plaintiff at this time cannot make Bank of America to respond to the



1 causes of action here, because Bank of America is not part of this claim. Presumably this case  
2 will be joined a present case against Bank of America presently under review before Bankruptcy  
3 Appellate Panel and filed by Plaintiff Rodolfo Velasquez.  
4

5 28. Shellpoint and all Defendants named here, knew of and/or willfully disregarded the  
6 issue of breaching their fiduciary duties to maintain Plaintiff loan account in good standing and  
7 providing correct balance amount. In addition to the actual knowledge Shellpoint and all  
8 Defendants named here willfully disregarded the loan Note governing the mortgage loan terms  
9 and breached it repeatedly by demanding payment from the Plaintiff distance from the amount  
10 established by their loan Note to be interpreted as a loan contract. In addition, Shellpoint and all  
11 Defendants named here adopted an awful conduct calling the Plaintiff by phone excessively to the  
12 point of falling into harassment and attacks against him.  
13

14 29. Shellpoint actively breached its fiduciary duties by, among other things: (1) continuing  
15 calling the plaintiff in a harassment manner; (2) failing to keep Plaintiff's mortgage account in  
16 good standing; (3) intentionally increasing Plaintiff's monthly mortgage payment from \$ 960.47  
17 established by the loan Note to excessive amount of \$1,085.30; (4) refusing to credited Plaintiff's  
18 monthly mortgage payments to his loan account with its intention to force the him to get into  
19 mortgage default that later would declare the Plaintiff insolvent, then Shellpoint and all  
20 Defendants named here would gain reason to foreclose the property backing the loan named: 58  
21 Lobos Street, San Francisco, California; and (5) ignoring numerous red flags that were apparent  
22 from the nature of Bank of America's wrong banking transactions and which required to be  
23 reviewed and investigate under existing banking rules and regulations against fraud.  
24

25 30. By Defendants' actions in participating in the fraudulent scheme perpetrated by Bank of  
26 America and continued by Shellpoint and all Defendants named here against the Plaintiff, as  
27  
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1 alleged above, Plaintiff Rodolfo Velasquez suffered serious financial and physical damage to the  
2 point that this Court should stop them from continuing.

3  
4 31. As a direct and proximate result of Defendant's wrongful acts such as breaching of  
5 fiduciary duties, Plaintiff Rodolfo Velasquez has suffered substantial damages, the exact amount  
6 of which will be proven at trial, but which amount plainly exceeds the jurisdictional minimum of  
7 this Court. Defendants' conduct was a substantial factor in causing Plaintiff's damages.

8 32. The conduct of Defendants is gross, reckless, and in bad faith or willful disregard of the  
9 rights and interest of Plaintiff.

10  
11 91. In aiding and abetting the breach of fiduciary duties detailed above, Defendant  
12 Shellpoint and all Defendants named here acted intentionally, maliciously, and oppressively, with  
13 a willful and conscious disregard of the rights of Plaintiff, so as to constitute oppression, fraud, or  
14 malice under the law. Accordingly, the Plaintiffs is entitled to recover punitive and exemplary  
15 damages in an amount sufficient to punish Defendants and to deter similar conduct in the future.

16  
17 SECOND CAUSE OF ACTION  
18 AIDING & ABETTING FRAUD  
19 (Against Shellpoint and all Defendants named in this Complaint)

20 33. Plaintiff incorporates by reference the foregoing allegations as though fully set forth  
21 herein.

22 34. Shellpoint and all Defendants named here knew the representations made to Plaintiff  
23 were false, and yet it still made those representations with the intent to force the Plaintiff  
24 Velasquez to get into mortgage default refusing to process his monthly payment that would  
25 increase unnecessary debt on him, and later, Shellpoint and all Defendants named here would get  
26 the right to foreclose his San Francisco property that values around: \$ 1,200,000.00.  
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1 36. Shellpoint and all Defendants named here actively and substantially assisted perhaps by  
2 Bank of America accomplices in this fraud by, among other things: (1) claiming higher monthly  
3 mortgage payment not allowed by the loan contract; (2) forcing the Plaintiff to get into default by  
4 refusing to credit his monthly payment; (3) inflating the payment history as of August 2015 in the  
5 amount of \$ 4,717.61; (4) with wrong balance in the amount of: \$ 107,163.90, Plaintiff wouldn't  
6 finish to pay his mortgage loan on time, accordingly to be matured in March 2029; and (5) with  
7 fraudulent and obscure amounts claimed by Shellpoint from Plaintiff. **See Exhibit 3**

8  
9 37. By its actions in participating in the fraudulent scheme perpetrated by Bank of America  
10 and Freddie Mac and continued by Shellpoint as alleged above, Plaintiff suffered damages in an  
11 amount to be proven at trial. Defendants' conduct was a substantial factor in causing Plaintiff's  
12 damages.  
13

14 38. Moreover, Defendants' actions were malicious, fraudulent, oppressive, and intended to  
15 injure the Plaintiff that consequently he is entitled to punitive damages.  
16

17  
18 **THIRD CAUSE OF ACTION**  
19 **AIDING AND ABETTING INTENTIONAL MISREPRESENTATION**  
20 **(Against Shellpoint Mortgage Servicing and all Defendants named here)**

21 37. Plaintiff incorporates by reference the foregoing allegations as though fully set forth  
22 herein.

23 40. Shellpoint and all Defendants named here intentionally represented to Plaintiff important  
24 facts concerning amounts disclosed in its Mortgage Statement marked in **Exhibit 3**, knew they  
25 were false, and the worse as of all as of the filing of this document, Shellpoint and all Defendants  
26 named here have done nothing to correct their fraudulent claim.  
27  
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1 41. As a result of Defendants' misrepresentations, Plaintiff suffered substantial economic  
2 and emotional damages in an amount to be determined at trial where all parties would have the  
3 opportunity to demonstrate their positions.  
4

5 42. Defendant's actions were malicious, fraudulent, oppressive, and intended to injure  
6 Plaintiff that consequently he is entitled to punitive damages.  
7

8 **FOURTH CAUSE OF ACTION**  
9 **AIDING AND ABETTING NEGLIGENT MISREPRESENTATION**  
10 **(Against Shellpoint Mortgage Servicing and all Defendants named here)**

11 43. Plaintiff incorporates by reference the foregoing allegations as though fully set forth  
12 herein.

13 44. Shellpoint and all Defendants named here made the assertions negligently and without  
14 any reasonable grounds for believing them to be true.

15 45. As a result of Shellpoint and all Defendants' named here numerous negligent  
16 misrepresentations claiming wrong amounts and telephonic threats, Plaintiff suffered substantial  
17 economic and emotional damages in an amount to be determined according to proof at the time of  
18 trial.  
19

20 **FIFTH CAUSE OF ACTION**  
21 **NEGLIGENCE**  
**(Against Shellpoint Mortgage Servicing and all Defendants named here)**

22 46. Plaintiff incorporates by reference the foregoing allegations as though fully set forth  
23 herein.

24 47. Shellpoint owed Plaintiff a duty of care of his mortgage account to be kept in a good  
25 standing and trustable amounts, and because Shellpoint and all Defendants' named here failure to  
26 keep the loan account in a good standing, as a direct and proximate result of the negligence of  
27  
28

1 Shellpoint and all Defendants named here, Plaintiff has suffered substantial damages, the exact  
2 amount of which will be proven at trial.  
3

4  
5 SIXTH CAUSE OF ACTION  
6 BREACH OF CONTRACT  
(Against Shellpoint Mortgage Servicing and all Defendants named here)

7 48. Plaintiff incorporates herein every allegation contained in the preceding paragraphs, as  
8 though set forth fully herein.

9 49. Mr. Rodolfo Velasquez entered into a mortgage loan contract with Countrywide that  
10 later merged with Bank of America. On July 2015, Bank of America transferred Plaintiff's  
11 mortgage loan to Shellpoint Mortgage Servicing, perhaps the daughter of New Penn Financial,  
12 LLC that is believe holds a corporation title. And Freddie Mac always has been the owner of  
13 Plaintiff's mortgage loan at least is what Plaintiff knows. There is an implied covenant of good  
14 faith and fair dealing in every contract that neither party will do anything which will injure the  
15 right of the other to receive the benefits of the agreement.  
16

17 50. Plaintiff Rodolfo Velasquez performed all obligations required of it under the  
18 Agreement that were not excused or discharged by Defendants' conduct. Defendants breached  
19 the Agreement when they engaged in the conduct described above, including 1) overcharging  
20 Plaintiff Mr. Rodolfo Velasquez with double interests, 2) demanding larger amounts for his  
21 monthly mortgage payments distant from the amount established by the mortgage Note of  
22 \$960.47, 3) inflating the balance of his mortgage loan that will not meet the mature date of March  
23 2029 according to Defendants' calculation, 4) forcing the Plaintiff to get into mortgage default by  
24 returning his monthly mortgage payments, 5) forcing the Plaintiff to accumulate unnecessary  
25 mortgage debt, and 6) failing to repair Plaintiff's loan account from the fraudulent demand for  
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1 several monthly payments, specifically payments that include principal plus interest, and claiming  
2 interest on top of the first, it's a clear fraudulent act.

3  
4 51. As a direct and proximate result of Defendants' actions, Plaintiff has suffered damages  
5 in a sum according to proof at trial.

6  
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for judgment as follows:

- 9  
10 1. For general and special damages in an amount according to proof;  
11 2. For punitive damages in an amount sufficient to punish Defendants and deter them  
12 from engaging in similar conduct in the future;  
13 2. For all costs of suit incurred herein;  
14 3. for prejudgment interest; and  
15 4. For such other and further relief as the court may deem just and proper

16 **JURY DEMAND**

17 **Plaintiff Rodolfo Velasquez respectfully demand a trial by jury on all claims so triable.**

18 Dated: 10-19-2015

19  
20 Respectfully Submitted

21   
22 Rodolfo Velasquez  
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